



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

October 31, 1961

The Hon. M. T. Harrington
Chancellor
Texas A & M College System
College Station, Texas

Opinion No. WW-1182

Re: Whether the Robert A. Welch
Foundation has the authority
to grant funds to Texas Agri-
cultural & Mechanical College
System for the establishment
of a modern-type cyclotron.

Dear Mr. Harrington:

In your letter of October 9, 1961, you requested the opinion
of this office on the following question:

"The Trustees of the Robert A. Welch Foundation, Houston,
have extended to the Agricultural & Mechanical College of
Texas through its Board of Directors, an invitation to submit
to them a proposal concerning the establishment of a modern
type cyclotron on the Agricultural & Mechanical College cam-
pus for the purpose of study, research, and experiments in
the field of basic chemical research.

"We contemplate accepting the Trustees' invitation; however,
before so accepting, we should appreciate your advising us as
to whether or not the Trustees, under their powers, may grant
funds to the College for the purpose stated. . ." (Emphasis
added)

To answer this question we need only look to the terms of the
instrument which created the trust now known as The Robert A. Welch
Foundation.

Robert A. Welch, being domiciled in Houston, Harris County,
Texas, died on December 27, 1952. His will was admitted to probate
on January 20, 1953. The following portions of the Will are relevant
to the matter at hand. All emphasis supplied below is ours.

ARTICLE V.

Section 9.

"(1). . .

"(2) (As amended by the codicil of July 29, 1949).

Consequently, it is my will, and I so direct, that for the first ten (10) years of the life of the Trust it shall be administered and operated exclusively for the purpose of research in the field of Chemistry, of such nature, and conducted in such manner, as in the judgment of the Trustees shall be productive of the best results in the way of new and useful discoveries and inventions, all of which discoveries and inventions shall be made available to Mankind. As regards the manner in which the Trustees shall apply Trust funds to the accomplishment of this purpose, that is left entirely to their judgment and discretion. It may be done by creating and operating agencies or organizations to conduct such research, or by employing others, or contracting with others, to do so.

"(3) After the first ten years of the life of the Trust, if the Trustees are of the opinion that it is no longer feasible or desirable to restrict the use of the funds of the Trust to the purpose just stated and are of the opinion, from time to time, that such funds should be used for other or additional charitable, scientific, or educational purposes chosen by them, they shall have full power and authority to use said funds accordingly, -- with this exception, namely, that there are many people who will give to church and other religious organizations, and it is not my intention, therefore, that these shall be included among those who are to be beneficiaries of the Trust hereby created. Nor is it my intention that State educational institutions shall be included among those who are to be beneficiaries of the Trust hereby created, except in so far as the Trustees shall deem it advisable to assist educational institutions with respect to research and investigation in the field of Chemistry. I exclude State educational institutions, generally, because it is to be presumed that they will be adequately supported by the State."


By glancing above at the underscored portions of the Will, the answer to the question seems clear. Mr. Welch has directed that during the first ten years of its existence, the Trust is to be dedicated to research in the field of Chemistry, the manner of application of such Trust funds to this purpose being left entirely to the judgment and discretion of the Trustees. State educational institutions are excluded as beneficiaries of the Trust, 'except insofar as the Trustees shall deem it advisable to assist educational institutions with respect to research and investigation in the field of Chemistry.' Does Texas Agricultural and Mechanical College's proposal to establish a modern-type cyclotron for study, research, and experiments in the field of Chemistry fall within this exception? Clearly it does. Such a project fulfills the purpose of the Trust and is well within the powers of judgment and discretion granted the Trustees.

SUMMARY

The Trustees of The Robert A. Welch Foundation, Houston, Texas, under their powers, may grant funds to the Texas Agricultural & Mechanical College for the establishment on campus of a modern-type cyclotron for the purposes of study, research, and experiments in the field of chemistry.

Yours very truly,

Will Wilson
Attorney General of Texas

By 
Harry Pat Hewell
Assistant Attorney General

HPH:lmc

APPROVED:

OPINION COMMITTEE:

W. V. Geppert, Chairman
Marvin Thomas
Phillip A. Nelson
Jack Price
Dudley McCalla

REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.